REMARKS

Claims 1-49 are now pending in this application. Claims 27-49 are newly added. Claims 1, 4, 29, 31 and 47 are independent. In the Office Action of October 3, 2003, claims 1-26 were rejected under 35 U.S.C. § 102(e) as being anticipated by Francischelli (US 2003/0073991). Additionally, claims 1-26 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 7, and 11 of U.S. Patent No. 6,517,536 (Hooven et al. '536 in view of Francischelli (US2003/0073991).

It is respectively submitted that the currently pending claims in this application should be allowed over the Francischelli application because they are supported by a priority application filed before the Francischelli application filing date. This application claims priority to U.S. Application Serial No. 09/747,609 (now U.S. Patent 6,546,935), which was filed on December 22, 2000. The filing date of December 22, 2000 is well before the filing date of the cited Francischelli application or the provisional priority application relied upon in the cited Francischelli. Thus, it is submitted that Francischelli is not prior art as defined in 35 U.S.C. 102(e).

The patent application (now U.S. Patent No. 6,546,935, copy enclosed) from which this application claims priority plainly supports the pending claims. Figures 2, 5 and 32, for example, show a cross-section of a clamping member that has electrode with

a conducting area with a width of about 1/3 of the width of the clamping member or less. The description expressly discloses that the electrodes may have a width of approximately 0.12-0.6 mm (col. 8, lines 18-19) (compare pending claims 3, 6, 30, 32).

This is also consistent with other portion of the description in the '935 patent. According to the specification, for example, Figure 9 "shows that the electrode clamp configuration provides a clamped zone of tissue that is wider than the zone of ablated tissue." (Col. 6, lines 37-39). The specification describes that the narrower zone of ablated tissue is achieved "by using an electrode width that is narrower than the clamped tissue width." (Col. 6, lines 41-42). With reference to Figure 32, the specification describes this electrode/clamp configuration as providing "a clamped zone of tissue that is significantly wider than the zone of ablated tissue created by the opposed electrodes." (Col. 8, lines 1-5), and sets forth specific electrode width dimensions of 0.12-0.6 mm (col. 8, lines 18-19).

Further, for example, Figure 6 shows an electrode 16 with a lumen 17, and insulating material surrounds the outer surface of the electrode except for the exposed top portion (col. 6, lines 19-22). In Figure 32, the facing surface has an elongated slot and a portion of the electrode extends through the slot (col. 8, lines 10-16).

Consequently, it is respectfully submitted that Francischelli is not prior art to the claims of this application under Section 102(e).

For these reasons, it is also respectfully submitted that claims 1-49 are patentable and that the double patenting rejection based on U.S. Patent 6,517,536 by Hooven et al. in view of Francischelli should be withdrawn.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,

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